

IN THE UNITED STATES DISTRICT COURT

RAIPH REED

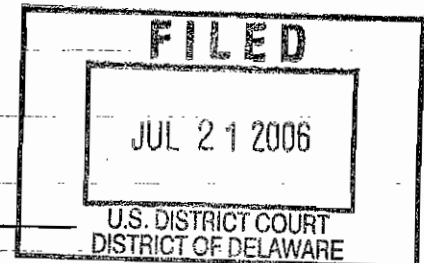
PETITIONER

V.

NO. 06 - 445

THOMAS L. CARROLL

D.C.C. WARDEN



2. APPENDIX TO Petitioner  
MEMORANDUM OF LAW ON  
BATSON WITH SUPPORTING  
Jury selection Transcripts  
IN SUPPORT OF HABEAS CORPUS  
RELIEF

DATE: 6-17-06

Ralph Reed  
Delaware Correctional Center  
1181 Paddock Road  
Smyrna Delaware 19977

In The Superior Court OF The State OF Delaware  
In And For Sussex County

State OF Delaware,

v.

Ralph Reed,

Defendant/movant

C.No. 991018706 (2-1)

CRA # 99-12-0398

CRA# 99-12-0399

Motion For An Evidentiary  
Hearing On The Batson Claim

The movant Ralph Reed For the good cause shown below request that the Honorable T. Henley Graves conduct an evidentiary hearing on the Batson claim raised in movant's pending Motion For Postconviction Relief.

Pursuant to Super. Ct. Crim. Rule 61 (b) granting an evidentiary hearing is in the total discretion of the trial judge and should be granted when justice so warrant. Webster v. STATE, 604 A.2d 1364 (Del. Supr. 1992).

One of movant's Ralph Reed's claims in support of a request for postconviction relief is that his trial counsel provided ineffective assistance for failing to raise a timely and

proper objection to the prosecution (or State's) use of their peremptory challenges to strike the only black person, Ms. Bernice Turner, from the jury panel. For identical reasons expressed by a white person, Mr. Jeff Haley, who was allowed to serve on the jury.

### The Unconstitutional Disparate

### Voir Dire Questions To Jury Panel

To begin with, at the outset of the jury selection, the trial court asked the entire jury panel seven (7) general voir dire questions:

a) Do you know anything about this case

through personal knowledge, discussion with anyone, the news media, or any other source?

(Tr. A-4);

b) Do you know the defendant or his friends or relatives? (Tr. A-4);

c) Do you know the attorneys in this case or any other attorney or employee in the office of the Attorney General or defense counsel? (Tr. A-4)

d) Do you know the victim, Gregory Howard? (Tr. A-6);

( continue ) ...

e) Do you have any bias or prejudice either For or Against the STATE or the defendant ? (Tr. A-6) ;

f) Do you have any religious or conscientious reasons as to why you cannot serve as a juror in this case ? (Tr. A-6) ; and

g) Is there any reason why you cannot give this case your undivided attention and render a Fair and impartial verdict ? (Tr. A-6)

Thereafter the trial court then stated to the jury panel :

Once again, this trial will begin today and will last approximately two weeks.

IF your answers to any of the above questions is yes or you cannot serve through May 19th, please come forward.

(Tr. A-6).

At that time the total of Fifty one (51) people from the jury panel responded "yes" to the court's general voir dire questions, of which Five (5) said they know the defendant/movant Ralph Reed or his friends or relatives. Four (4) of those jurors Jeremy Fisher, Leona Steen, Sandra Johnson and Amy Baker were excused for cause by the court. (See Tr. A-9, A-18, A-28 & A-32)

After the State Failed to convince the trial court to excuse the Fifth juror, Bernice Turner, for cause (See Tr. A-23, A-30 & A-42), the State later exercised one of its peremptory challenges to eliminate the only Black juror Ms. Turner for cause because she may have casually known one of the witnesses Darren Bacon's mother, at which time the movant's trial counsel made a poor imprecise Batson objection to the State's securing an all white jury. (Tr. C-6 thru C-9). To be precise, movant's trial counsel's objection was not based upon his professional judgment and strategy, stating that:

But because of the Family's concerns, I wanted this expressed to the court, and I suppose I want to lodge an objection just based on the Family's concerns.

(Tr. C-6, C-7).

Thus, out of the 51 jurors that responded to the trial court's voir dire questions, none initially indicated any knowledge of knowing the victim's friends or relatives because no such question was asked the panel as it was asked regarding the movant's friends or relatives. (compare voir dire questions #b and #d herein above).

Furthermore, any juror who knew the victim's friends or relatives may have felt that they were not obligated to share this important information with the court and may considered it to be insignificant.

Thus, it is common-sense logic of reality that the majority of the friends and relatives of any person is of their own race and the persons of the mind to discriminate would know this reality. That statistical reality is apparent from the racial make-up of movant's all white jury selected from a discriminatory voir dire questioning policy which favors whites over blacks.

As indicated above, any member of the jury that responded affirmatively to the court's voir dire questions were not selected to serve on the movant's jury, but all the black people were either excluded by the court for cause or challenged by the state for cause.

Although there may have been several white people who were selected to serve on movant's jury that knew the victim's friends or relatives (a reason generally cited for exclusion for cause, Tr. C-8), no whites were eliminated for this reason that resulted in the removal of all the blacks.

For instance, on the second day of movant's trial a white juror, Jeff Haley, notified the court that he knew the victim's brother from



work but stated (quote) "I know him to say hi" (Tr. B-4). (unquote) compare with black juror Ms. Turner's reply that (quote) "no, I just know her" (A-43). Nevertheless the prosecution never asked the trial court to exclude Mr. Haley for cause as it did with Ms. Turner. (Tr. B-4, B-5). Nor did the trial court ask the rest of the jury members did they know the victim's friends or relatives. (Tr. B-5, B-6). And movant's trial counsel kept completely silent while the prosecution purposely discriminated in the jury selection process by securing an all white jury with one or more members that actually knew the victim's friends or relatives. (Tr. B-5, B-6).

Trial counsel never lodged an objection over the non-exclusion of Mr. Haley based on Batson v. Kentucky, 476 U.S. 59 (1986) where, as here, there is disparate voir dire questioning which caused the black venire members to be singled out and excluded on account of their race while the white members knowing the white victim were permitted to serve on the jury in favor of the prosecution. Thus, such disparate discriminatory voir dire questioning has been condemned by the United States Supreme Court in Miller-el v. Cockrell, 537 U.S. — (2003).

The STATE'S Disparate Treatment OF  
Similarly Situated Black And White  
Jurors Is Pretext For Discrimination

Likewise disparate treatment of the races who are similarly situated when exercising peremptory challenges, as the STATE did in movant's case, is a pretext for purposeful discrimination. See Riley v. Taylor, 277 F.3d 261, 282-83 (3d Cir. 2001). Riley is a recent Delaware case wherein the Third Circuit Court condemned this same exact discriminatory practice in the jury selection process. See Harrison v. Ryan, 909 F.2d 84, 88 (3d Cir.), cert. denied 498 U.S. 1003 (1990) (holding that exclusion of one Black juror from jury on the basis of race is sufficient to require a new trial pursuant to Batson)

The Third Circuit Court stated in Riley that the Batson inquiry has been characterized as a three-step one where "a defendant may establish a prima facie case of purposeful discrimination in selection of the petit jury solely on evidence concerning the prosecutor's exercise of peremptory challenges at the defendant's trial. 277 F.3d at 275. Once the defendant makes a prima facie showing of racial discrimination (step one), the prosecution must articulate a race-neutral explanation for its use of peremptory challenges (step two).



Id. IF it does so, the trial court must determine whether the defendant has established purposeful discrimination (Step Three). Id. The ultimate burden of persuasion regarding racial motivation rests with, and does not shift from, the defendant. Id. (citing Purkett v. Elem, 514 U.S. 765, 768, 115 S.Ct. 1769, 131 L.Ed.2d 834 (1995)).

In movant's case, although his trial counsel made a poor imprecise objection to the prosecution's use of its peremptory challenges to strike the one black juror, step one of Batson was established. (Tr. C-7).

At that time the movant's trial counsel and the prosecution attempted to satisfy Step Two of Batson by attempting to provide a race neutral reason for striking Ms. Turner relying on the Delaware Supreme Court's decision in Freddiman v. State, Del. Supr. No. 203, 1988, Holland, J. (February 22, 1989) AT 19 (the State must demonstrate that the peremptory challenges were made on grounds of specific, individual juror bias or on grounds reasonably related to the particular case on trial or its particular parties or witnesses' and not solely on the grounds of the jurors' race) (Tr. C-6 to C-8). However, the Freddiman's "not solely on the... race" standard has been rejected by the Third Circuit Court in Riley and

Shown to be evident that the STATE's proffered race-neutral explanations were pretextual, because race can never play any factor at all in the jury selection process. Riley, 277 F.3d at 285.

The second problem is that the race neutral reason the STATE proffered on the record for its strike of Ms. Turner, in which the trial court acquiesce with, was a concern over the juror's mere acquaintance with one of the witnesses' mother (Tr. C-7 to C-9), a similar factor that existed with a white juror, Mr. Haley, being acquainted with the victim's brother but was still permitted to serve on the jury. (Tr. B-3 to B-6). This rationale like the Freddiman's not solely on race standard and the unfair voir dire questions all show the STATE's intent of disparate treatment of similarly situated Black and white jurors in the jury selection process.

..

.. The State Has Not Satisfied The  
 .. Third Set Of Batson To Explain Its  
 .. Disparate Discriminatory Policy

..

When reviewing the trial record as a whole the prosecution's race neutral reasons for striking the only black juror Ms. Turner are both pretextual and inadequate to rebut movant's claim that the STATE

did not discriminate on the account of race. Thus, the trial record also reflect that the prosecution never offered any race neutral explanations for its disparate treatment of similarly situated black and white jurors or the disparate voir dire questions as to whether any juror knows defendant's friends or relatives while failing to propose the same question to the jury panel concerning the victim's friends or relatives. (See Voir Dire Questions, Tr. A-4 and A-6).

Therefore step three of Batson require this court to make the ultimate determination whether the movant established purposeful discrimination based upon each piece of evidence which should not be reviewed in isolation. Riley, 297 F.3d at 283. But first the State must satisfy step two of Batson which require this court to conduct an evidentiary hearing and evaluate all evidence introduced by each side (including all evidence introduced in the first and second steps) that tends to show that race was or was not the real reason and determine whether the defendant has met his burden of persuasion. Riley at 286.

As the record stand now the prosecution's explanations are clearly pretextual for purposeful discrimination especially when viewed together with the disparate voir dire questions posed to the venire about movant's friends and relatives who are black and the lack

of inquisition regarding the victim's Friends and relatives who are white, because the emphasis of such disparate questions imply emphatically a deliberate intent by the State to discriminate against all movant's Friends and relatives and any person who knows movant's Friends and relatives who are black and a desire to exclude them from jury service from the outside of the jury selection, while permitting the victim's white Friends and relatives or any person who know them who are white to serve on the jury without any inquiry to identify them at all.

This evidence, of course, is relevant and sufficient to the extent it casts doubt on the legitimacy of the motives underlying the State's actions in movant's case. Miller-el v. Cockrell, 537 U.S. \_\_\_\_\_. (2003).

Lastly, both State and Federal courts made clear that the Batson step three inquiry is not merely a formalistic one, but an integral element of the required analysis. Riley at 290-91 (citing State v. Collier, 553 So.2d 815, 821 (La. 1989) (holding that the trial judge cannot simply "[r]ubber stamp... [a prosecutor's] non-racial explanation, no matter how whimsical or fanciful... [but] in order to permit a questioned [peremptory challenge]... must conclude that the proffered reasons are, first, neutral and reasonable, and, second, not a pretext"). Id. 291 n. 11.

Wherefore, for the good cause shown above herein this court should grant movant Ralph Reed's motion to conduct an evidentiary hearing on the Batson claim.

Respectfully submitted,

Ralph Reed

Ralph Reed, pro se  
Delaware Correctional Center  
1181 Paddock Road, Box 500  
Smyrna, Delaware 19977

Dated: November 29, 2004

Certificate of Service

I, Ralph Reed, hereby certify that I have served a true  
and correct copy(ies) of the attached: Motion For Evidentiary  
Hearing upon the following  
parties/person (s):

TO: Karl Haller, Esq.  
Office of Public Defender  
14 The Circle, 2nd Floor  
Georgetown, Dela.  
19947

TO: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

TO: James W. Adkins, Esq.  
Department of Justice  
114 West Market Street  
Georgetown, Dela.  
19947

TO: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

BY PLACING SAME IN A SEALED ENVELOPE and depositing same in the United  
States Mail at the Delaware Correctional Center, 1181 Paddock Road, Smyrna, DE  
19977.

On this 29 day of November, 2004

+ Ralph Reed



1 trial will begin today and we estimate it will take  
2 two weeks.

3 Do you know anything about this case through  
4 personal knowledge, discussion with anyone, the news  
5 media, or any other source?

6 Do you know the defendant or his friends or  
7 relatives?

8 The State is represented by James W. Adkins,  
9 a Deputy Attorney General. The defendant is  
10 represented by Karl Haller.

11 Do you know the attorneys in this case or any  
12 other attorney or employee in the Office of the  
13 Attorney General or defense counsel?

14 Do you know any of the following persons who  
15 might be called to testify as witnesses: Detective  
16 James Fraley, Delaware State Police; Detective Robert  
17 Hawkins, Delaware State Police; Detective Curt Brown,  
18 Delaware State Police; Detective Keith Marvel,  
19 Delaware State Police; Detective Brian Conlin,  
20 Delaware State Police Troop 4; Sergeant Scott  
21 Galbreath, Delaware State Police Troop 2; Corporal  
22 Ronald Voshell, Delaware State Police Troop 5;  
23 Sergeant Steve Swain, Delaware State Police Troop 4;

DAVID WASHINGTON  
Official Court Reporter

Tr. A-4



1 Sharon Tull, Millsboro; Elroy Collick, Laurel,  
2 Delaware.

3 Do you know the victim, Gregory Howard?

4 Do you have any bias or prejudice either for  
5 or against the State or the defendant?

6 Do you have any religious or conscientious  
7 reasons as to why you cannot serve as a juror in this  
8 case?

9 Is there any reason why you cannot give this  
10 case your undivided attention and render a fair and  
11 impartial verdict?

12 Once again, this trial will begin today and  
13 will last approximately two weeks. If your answers to  
14 any of the above questions is yes or you cannot serve  
15 through May 19th, please come forward.

16 THE COURT: Let me see counsel at the  
17 sidebar.

18 (Whereupon, counsel approached the bench and  
19 the following proceedings were had:)

20 THE COURT: It may be helpful that since the  
21 State is not seeking the death penalty that we make  
22 the jury panel aware of that.

23 MR. HALLER: Yes, I was going to ask that.

DAVID WASHINGTON  
Official Court Reporter



Tr. A-6

1 Use the call-in number tomorrow night for Wednesday's  
2 cases.

3 PROSPECTIVE JUROR: All right. Thank you.

4 (Whereupon, the juror left the bench as  
5 another prospective juror approached the bench.)

6 THE COURT: Your name for the record?

7 PROSPECTIVE JUROR: Jeremy Fisher. I went to  
8 school with the defendant. Also some of the other  
9 officers I heard mentioned in the case.

10 THE COURT: How old are you?

11 THE BAILIFF: 20.

12 THE COURT: You went to Laurel High School?

13 PROSPECTIVE JUROR: No, but I went to Cape.  
14 Cape is split up between different regions.

15 THE COURT: I will excuse you. Use the  
16 call-in number tonight for tomorrow.

17 PROSPECTIVE JUROR: I'm good to go now?

18 THE COURT: Yes.

19 (Whereupon, the juror left the bench as  
20 another prospective juror approached the bench.)

21 THE COURT: Is your client from Cape?

22 MR. HALLER: It is probably a special school.

23 THE COURT: Your name for the record?

DAVID WASHINGTON  
Official Court Reporter

Tr. A-9

1 was the administrative assistant at a school of  
2 adjudicated youth.

3 THE COURT: I will excuse you and ask you to  
4 use the call-in number tonight for tomorrow's cases.

5 (Whereupon, the juror left the bench as  
6 another prospective juror approached the bench.)

7 THE COURT: Your name for the record?

8 PROSPECTIVE JUROR: I know Curt Brown.

9 THE COURT: Okay. Tell me your name for the  
10 record?

11 PROSPECTIVE JUROR: Leona Steen.

12 THE COURT: How do you know Mr. Brown?

13 PROSPECTIVE JUROR: I know his family over in  
14 Bridgeville and Greenwood and I worked with his  
15 father.

16 THE COURT: Do you know the officer  
17 personally or just know him through this family?

18 PROSPECTIVE JUROR: I know him. I know his  
19 family. I don't know him really well as far as  
20 visiting.

21 THE COURT: Is that just a work relationship?

22 THE DEFENDANT: I know his parents. We are  
23 friends.

DAVID WASHINGTON  
Official Court Reporter

A-5  
A

Tr. A-18

1 THE COURT: I will take you off this case and  
2 ask you to call in tonight for tomorrow.

3 (Whereupon, the juror left the bench as  
4 another prospective juror approached the bench.)

5 THE COURT: Good morning. Your name is?

6 PROSPECTIVE JUROR: Sandra Johnson. I am  
7 familiar with one of your witnesses, a Daren Bacon.  
8 His mother and father both are real good friends of  
9 mine.

10 THE COURT: I am going to go ahead and excuse  
11 you from this case and ask you to use the call-in  
12 number tonight for tomorrow.

13 (Whereupon, the juror left the bench as  
14 another prospective juror approached the bench.)

15 THE COURT: Your name?

16 PROSPECTIVE JUROR: Catherine Taylor. I work  
17 for probation and parole. I'm sure I signed his  
18 pretrial supervision. I do all pretrial supervision  
19 in Sussex County.

20 THE COURT: I am going to excuse you from  
21 this case and ask you to use the call-in number  
22 tonight for tomorrow.

23 MR. HALLER: Nice to see your face.

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Official Court Reporter

Tr. A-28

1 (Whereupon, the juror left the bench as  
2 another prospective juror approached the bench.)

3 THE COURT: Your name for the record?

4 PROSPECTIVE JUROR: Kendra Moore. My father  
5 and I are building a motel in Rehoboth Beach. I'm  
6 trying to get it opened by Memorial Day. I have a lot  
7 of work to do. I took a couple days off last week.

8 THE COURT: Ronnie your dad?

9 PROSPECTIVE JUROR: Kenny Simpler.

10 THE COURT: I saw him on Friday. He was  
11 blaming me for blocking the road. I am going to keep  
12 you on the panel right now. I tell you what, the type  
13 of work you do, I know it's difficult, but you can  
14 probably work around it. My panel is getting rather  
15 thin right now.

16 (Whereupon, the juror left the bench as  
17 another prospective juror approached the bench.)

18 THE COURT: Your name for the record?

19 PROSPECTIVE JUROR: Amy Baker. I am a social  
20 worker in the Laurel School District. I believe one  
21 of the witnesses is a student in the Laurel School  
22 District. I also went to high school with another.

23 THE COURT: Who do you think the student is?



1 PROSPECTIVE JUROR: Roberta Reed.

2 THE COURT: The other person that you went to  
3 school with?

4 PROSPECTIVE JUROR: Daren Bacon.

5 THE COURT: Was Daren Bacon in your class?

6 PROSPECTIVE JUROR: Graduating class?

7 THE COURT: Yes.

8 PROSPECTIVE JUROR: I believe so.

9 THE COURT: All right. I have to ask you  
10 this question, I can guess it, but I need to establish  
11 a record: You are how old?

12 PROSPECTIVE JUROR: 26.

13 THE COURT: I'm going to go ahead and excuse  
14 you from this particular case and ask you to use the  
15 call-in number.

16 (Whereupon, the juror left the bench as  
17 another prospective juror approached the bench.)

18 MR. ADKINS: Is there any chance we can  
19 revisit Bernice Turner? ✓

20 THE COURT: In a moment.


21 PROSPECTIVE JUROR: I know Detective --

22 THE COURT: Tell me your name?

23 PROSPECTIVE JUROR: Tammy Russum. I haven't

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Official Court Reporter

TF. A-32



1 THE COURT: I will excuse you from this  
2 particular case. I will go ahead and excuse you from  
3 the -- for the week. Go on back to work.

4 (Whereupon, the juror left the bench as  
5 another prospective juror approached the bench.)

6 THE COURT: Your name?

7 PROSPECTIVE JUROR: Bernice Turner. I know  
8 one of the witnesses, Daren Bacon. ✓

9 THE COURT: How do you know that person?

10 PROSPECTIVE JUROR: He's a friend of my son's  
11 and I work with his mom.

12 THE COURT: His mother also?

13 PROSPECTIVE JUROR: Yes.

14 THE COURT: Do you think that may give you  
15 problems sitting on the case?

16 PROSPECTIVE JUROR: No, but I work for  
17 duPont. I have already been off one week and I think  
18 two weeks would be too long.

19 THE COURT: They are pretty good about that.  
20 Do you think you can be a fair and impartial juror?

21 PROSPECTIVE JUROR: Yes.

22 THE COURT: I am keeping you on the panel.

23 PROSPECTIVE JUROR: Okay.

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Official Court Reporter



Tr. A-30

1 (Whereupon, the juror left the bench.)

2 THE COURT: All right. Let's revisit the one  
3 Mr. Adkins wanted to revisit. The name is?

4 MR. ADKINS: Bernice Turner. It is my  
5 recollection that she says she knows Daren Bacon. I  
6 -think she actually works with Daren's mother. Daren  
7 Bacon is a close friend of the defendant, Ralph Reed.  
8 He was present at the -- near the entrance way when  
9 this shooting took place by Ralph Reed. Daren Bacon,  
10 Mashika Williams and Sharnelle West were all hanging  
11 out with Ralph Reed that night. Although we will call  
12 them as witnesses because we want to present the  
13 complete case, we will end up by summation, without  
14 saying they are liars, calling all three of them liars  
15 and in cahoots with Ralph Reed, the defendant. So  
16 Daren Bacon will be a very controversial witness. I  
17 am very uncomfortable with someone who knows him and  
18 knows his mother sitting on this jury.

19 THE COURT: What's the name again?

20 MR. ADKINS: Bernice Turner.

21 THE COURT: Bernice Turner, if you would come  
22 to the bar for a moment.

23 (Whereupon, Bernice Turner approached the

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Tr. A-42

1 bench.)

2 THE COURT: Mr. Bacon's mother you say you  
3 work with?

4 PROSPECTIVE JUROR: Yes.

5 THE COURT: Where do you work?

6 PROSPECTIVE JUROR: DuPont.

7 THE COURT: Does she work the same shifts?

8 PROSPECTIVE JUROR: No, different shifts.

9 THE COURT: Are you good friends with her at  
10 work?

11 PROSPECTIVE JUROR: No, I just know her.

12 THE COURT: Would you be uncomfortable being  
13 on a case where you have to determine the credibility  
14 of her son one way or the other?

15 PROSPECTIVE JUROR: No.

16 THE COURT: One of the jury's  
17 responsibilities is to decide whether someone is more  
18 credible or less credible than another witness. Do  
19 you think you can do this and be a fair and impartial  
20 juror?

21 PROSPECTIVE JUROR: Yes, because I'm a  
22 Christian.

23 THE COURT: At this point I am keeping you on

1 the panel.

2 (Whereupon, the juror left the bench.)

3 THE COURT: Exceptions?

4 MR. HALLER: None.

5 MR. ADKINS: No.

6 THE COURT: Let's get started. Then we will  
7 take up the 404(b) issue and the other issue. I  
8 probably will have six alternates because of the long  
9 period and so many witnesses. I would be shocked if  
10 somebody didn't say they recognize them by faces and  
11 names.

12 MR. ADKINS: We are asking for sequestration.

13 THE COURT: I will enter the sequestration  
14 order at this point in time. Remind me. I am asking  
15 each of you to directly discuss this sequestration  
16 order with all your witnesses, making them aware that  
17 they are not to discuss the case except with you. We  
18 all know the bounds of it, not to discuss their  
19 testimony after one has testified, not to exchange  
20 what questions were asked or anything of that nature.  
21 If you want them all brought in, they probably will be  
22 sequestered on different days and I won't have an to  
23 say that to the whole group.

B-3

\* \* \*  
PROCEEDINGS  
\* \* \*

1  
2  
3  
4 THE COURT: Good morning.

5 MR. ADKINS: Good morning.

6 THE COURT: Mr. Haller, I knew that you  
7 weren't going to be able to be around, I had a  
8 transcript done of the return on the capias for you so  
9 that you would have it since the State was present and  
10 a witness was kept on a \$5,000 cash bond. So that's  
11 what took place. It's an important case and that's at  
12 the Court's expense.

13 MR. HALLER: I know.

14 THE COURT: All right. We ready to bring the  
15 jury in?

16 THE BAILIFF: Your Honor, No. 2 on the jury  
17 needed to speak with you.

18 THE COURT: I will see counsel at the sidebar  
19 with Juror No. 2.

20 (Whereupon, counsel and Juror No. 2  
21 approached the bench and the following  
22 proceedings were had:)

23 THE COURT: Hello. Your name?

DAVID WASHINGTON  
Official Court Reporter

*Exhibit A*

Tr. B-3



1                    JUROR No. 2: Jeff Haley. Yesterday I  
2                    recognized somebody in the gallery, a fellow by the  
3                    name of Robert Howard. He worked at the Indian River  
4                    Power Plant. He worked for a company that do all the  
5                    asbestos abatement. I know him to say hi. I thought  
6                    I ought to make you aware.

7                    THE COURT: He would be, Mr. Adkins?

8                    MR. ADKINS: I would rather not say in the  
9                    presence of the juror. You know, if he doesn't  
10                   know --

11                   THE COURT: Well --

12                   MR. ADKINS: Whatever you want, Your Honor.  
13                   I can say it.

14                   THE COURT: Step away one moment.

15                   (Whereupon, Juror No. 2 stepped away from the  
16                   bench.)

17                   MR. ADKINS: He is the brother of the victim.

18                   THE COURT: That's what I wanted to know. I  
19                   want to know if that will have an impact. I put two  
20                   and two together and noticed he is part of the family.

21                   MR. ADKINS: Okay.

22                   (Whereupon, Juror No. 2 approaches the  
23                   bench.)

1           THE COURT: I am told he is the brother of  
2           the victim in this case. And what I need to know from  
3           you is: Would that have an effect on your ability to  
4           be a fair and impartial juror?

5           JUROR No. 2: No. I thought I should make it  
6           aware that I seen him around the plant.

7           THE COURT: Would it cause you any trouble or  
8           things of that nature? Let me give you a  
9           hypothetical: If you met this person at the job or  
10          plant and you determined that a verdict should be not  
11          guilty, would this cause you any trouble?

12          JUROR No. 2: Not at all.

13          THE COURT: If you determined that the  
14          verdict should be guilty, would that give you any  
15          trouble?

16          JUROR No. 2: No, not at all.

17          THE COURT: Do you think you can listen to  
18          the evidence and be a fair and impartial juror?

19          JUROR No. 2: Certainly.

20          THE COURT: I ask you to step away.

21                 (Whereupon, Juror No. 2 stepped away from the  
22          bench.)

23          THE COURT: Any questions?

DAVID WASHINGTON  
Official Court Reporter

Exhibit A

Tr. B-5

1 THE COURT: I'll leave it up to you all.

2 MR. ADKINS: I'd rather she be here for the  
3 day.

4 MR. HALLER: The value would be minimal.

5 THE COURT: All right.

6 MR. HALLER: I don't care. That's their  
7 decision. Okay. I've got two matters I need to  
8 address.

9 THE COURT: Yes.

10 MR. HALLER: All right. First of all is  
11 the selection of the jury, Your Honor. Both the  
12 family and the defendant expressed to me the problem  
13 we have here, at least from the defense standpoint,  
14 it being an all white jury. And in the jury  
15 selection process, as I recall, there was one black  
16 that was selected and that person was challenged by  
17 the State. That was the only minority that was  
18 selected to the jury box during that process.

19 Now, having had the Feddiman case -- and I  
20 don't remember whether that was you or whether it  
21 was some other judge -- that was like five years  
22 ago. I think the State exercised four strikes and  
23 they were all against four black people, and didn't

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1 exercise any against the white people. The Supreme  
2 Court said there wasn't any problem. I didn't think  
3 I really had any standing or could object based on  
4 the law. But because of the family's concerns, I  
5 wanted this expressed to the Court, and I suppose I  
6 want to lodge an objection just based on the  
7 family's concerns.

8 THE COURT: Well, let me just say this.  
9 This Court and the Supreme Court, the striking of  
10 the four blacks without any other information, is  
11 inappropriate in the Feddiman case and all the cases  
12 that this Court has ruled on and the Supreme Court  
13 has ruled on.

14 If under Batson a pattern is established or  
15 noted by the Court, the Court requests race neutral  
16 reasons for the strike. If race neutral reasons are  
17 given -- for example, many people in this Court are  
18 stricken regardless of race because they may have a  
19 misdemeanor record. You can be used as a juror with  
20 a misdemeanor record. So I think that was the  
21 situation in Feddiman.

22 In this situation, we have one black that  
23 was struck. That black, I think, also was the

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1 person that the State sought to have stricken for  
2 cause at sidebar because that person worked with  
3 Mr. Bacon's mother at the duPont plant and had some  
4 acquaintance with Mr. Bacon, but still said she  
5 thought she could be a fair and impartial juror. So  
6 I made the presumption that I expected, if she was  
7 called, that the State would probably strike her  
8 based on that, and you probably thought the same  
9 thing.

10 But I'll let Mr. Adkins and Ms. Tsantes  
11 speak for themselves. They're not required to.  
12 Because I don't think that under Batson -- they've  
13 struck one person. If you want to limit the issue,  
14 we can speak to it briefly now.

15 MR. HALLER: I share your recollection as  
16 regards to the events you just recited.

17 MR. ADKINS: And your recollection is  
18 100-percent accurate, Your Honor. We did strike for  
19 cause. We pointed out at sidebar that Darren Bacon  
20 would be at controversial witness, that he may be a  
21 witness that's hostile to the State, that we may  
22 have to end up arguing that he's not being  
23 completely truthful. We certainly didn't want a

1 person on the jury that had any type of connection  
2 with Darren Bacon or his mother, judging Darren  
3 Bacon's credibility who we felt his credibility  
4 would be very much in question in this trial.

5 THE COURT: All right. I'm satisfied, and  
6 I'm satisfied as to the timeliness. I also note  
7 that -- and I don't have the numbers as to the  
8 entire panel. But there were some blacks that were  
9 excused on the voir dire, either for cause  
10 because -- well, it would have been for cause. Some  
11 knew the defendant, some were involved in agencies  
12 that had contact with the defendant or potential  
13 contacts. I think there was a pre-trial services  
14 lady, things of that nature.

15 So for purposes of the timeliness or the  
16 lack of timeliness and for good cause shown by the  
17 State, I find nothing wrong with the striking of the  
18 sole black.

19 MR. HALLER: All right. The second issue,  
20 it deals with a witness which I think we may be  
21 getting today by the State, Kenyon Horsey. There  
22 are evidentiary matters, but I'll bring those up  
23 later when we get closer to that witness. However,

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EXhibit

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